IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL.

Writ Petition No. 6676(S/S)2001
(Old no. 10307/1993)

Brahmeshwar Rai S/o Babu Nandan Rai,
Resident of village Jathwar,
Post Masoompur, Ballia. ---- Petitioner.

Vs.

1. Dy. General Manager (North Zone),
   U.P. State Road Transport Corporation,
   Bareilly,
2. Regional Manager, U.P. State Road Transport,
   Corporation, Nainital,
3. Asst. Regional Manager, U.P. State Road
   Transport Corporation, Rudrapur. ---- Respondents.

Sri. U.K. Uniyal, learned Senior Counsel for the petitioner.
Sri. A.N. Sharma, learned counsel for the respondents/corporation.

Hon'ble M.M. Ghildiyal, J.

Heard Sri U.K. Uniyal, learned Senior Counsel for the petitioner and Sri Deep Narayan, Adv. holding brief of Sri A.N. Sharma, learned counsel for the respondent's Corporation.

By means of this writ petition, the petitioner has prayed for the following reliefs:-

a. To issue a writ, order or director in the nature of certiorari quashing the orders dated 27.01.1993, 9.6.1992 and 22.12.1990 passed by the Assistant Regional Manager U.P.S.T.C. Rudrapur, Dy. General Manager, U.P.S.R.T.C., Bareilly and Regional Manager, U.P.S.R.T.C., Nainital respectively,

b. To issue a writ, order or direction in the nature of mandamus directing the respondents to reinstate the petitioner back in service and to pay him all arrears of

salary for which he is entitled to in accordance with law,

c. To issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case,

d. To award cost of the writ petition to the petitioner.

The facts, in brief, are that the petitioner who was working as Conductor with the respondent's Department was charge sheeted; an inquiry was conducted against the petitioner. After report was received from the Inquiry Officer, the Disciplinary Authority awarded punishment on the basis of findings recorded by the Inquiry Officer terminating the petitioner from his services.

Submission of the learned counsel for the petitioner is that the petitioner has never received charge sheet and the entire inquiry was conducted ex-parte. On the other hand, learned counsel for the respondents has refuted the submission advanced by learned counsel for the petitioner and submitted that charge sheet was sent to the petitioner at his permanent residential address, but the petitioner was not available even at his permanent residence, thus publication was made in the Daily Newspaper Uttar Ujala and even after the publication, the petitioner did not turn up in the proceeding of inquiry, consequently the inquiry was conducted in his absence.

Learned counsel for the petitioner has contended that the Newspaper in which the publication was made has not in broad circulation and it confines only to the State of Uttarakhand, whereas; the petitioner is the permanent resident of district Balia State of U.P. where the said Newspaper is not circulated

consequently, the petitioner could not have any knowledge about the inquiry which was being conducted by the respondents and he could not participate in the inquiry.

The petitioner preferred appeal against the termination order before the Appellate Authority on 15th March 1991. Learned counsel for the petitioner has further submitted that the Appeal was turned down by the Appellate Authority on the ground of delay vide its order dated 09.06.1992. The order dated 09.06.1992 rejecting the appeal was communicated to the petitioner vide order dated 27.01.1993. The appeal was filed on 15th March 1991 well within the time however, the Appellate Authority without applying its mind has rejected the Appeal on the ground that the same was beyond time. According to the learned counsel for the petitioner, the appeal can be filed within three months from the date of communication of the order. The order of termination was passed on 22.12.1990 and it was not communicated to him on that very date and the petitioner came to know about the order passed by the Disciplinary Authority much after passing of the order by the Disciplinary Authority. The Appeal was preferred before the Appellate Authority on 15th March 1991, thus the appeal was not time barred.

Learned counsel for the respondent has submitted that the Rules provides that the appeal can be preferred within three months from the date of passing of the order by the Disciplinary Authority in a disciplinary proceedings. In my opinion, if the order has been passed but the same is not communicated to the delinquent within three months, it does not mean that the date from which the delinquent was discharged, will be counted for the purpose of filing of the appeal within three months and the

delinquents should not be given advantage for filing the appeal from the date of knowledge of the order passed in disciplinary proceedings. The date of knowledge is relevant for filing of the appeal, in case, the delinquent is aggrieved with the order of Disciplinary Authority the Rules should be interpreted in such matters where the order was communicated to the delinquent much after passing of the order.

Assuming that there was delay of 7 days in filing the appeal, it would have been condoned by the Appellate Authority.

Learned counsel for the petitioner has submitted that he received copy of the order on 28.12.1990, thus the appeal was within time and even if it was delayed by seven days it would have been condoned instead of dismissing the same on the ground of delay, which itself evident from the order dated 09.06.1992 and the said order of dismissing the appeal has been communicated to the petitioner on 27.1.1993.

In the forgoing circumstances, I direct the Appellate Authority to entertain the appeal and take decision on the same on merits within a reasonable period preferable within a period of four months from the date of production of a certified copy of this order.

With these directions, the writ petition is disposed of. No order as to costs.

(M.M. Ghildiyal, J.)

July 18, 2007:
NCM: